

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,

v.

PIERRE CIDONE.

NO. 3:CR-06-061

(JUDGE CAPUTO)

MEMORANDUM ORDER

Presently before the Court is Pierre Cidone's ("Cidone") Motion to Withdraw Guilty Plea. (Doc. 265.) Cidone entered a guilty plea to Count 2 of the Indictment on June 4, 2008. Cidone's subsequent efforts to withdraw his guilty plea were unsuccessful, and he was ultimately sentenced to 120 months of imprisonment on January 19, 2010.

Cidone then appealed the judgment and sentence to the United States Court of Appeals for the Third Circuit. The Third Circuit affirmed the judgment on November 18, 2011. See *United States v. Cidone*, 452 F. App'x 190 (3d Cir. 2011). On February, 28, 2012, the Third Circuit issued a Certified Order in lieu of a formal mandate. (Doc. 237.)

Next, on February 11, 2013, Cidone filed a motion pursuant to 28 U.S.C. § 2255. (Doc. 245.) The § 2255 motion was denied on December 19, 2013. (Docs. 263; 264.) Cidone then filed the instant motion to withdraw his plea on February 18, 2014. (Doc. 265.) On February 27, 2014, Cidone filed a Notice of Appeal of the order denying his § 2255 motion. (Doc. 267.)

Cidone's motion will be denied. Rule 11(e) of the Federal Rules of Criminal Procedure provides that "[a]fter the court imposes sentence, the defendant may not withdraw a plea of guilty or nolo contendere, and the plea may be set aside only on direct appeal or

collateral attack." Fed. R. Crim. P. 11(e). Here, as explained, Cidone has already been sentenced. And, he has also filed both a direct appeal and a collateral attack. As such, his guilty plea cannot be set aside on the instant motion. Moreover, the Third Circuit has previously affirmed the denial of an appellant's motion to withdraw his guilty plea in circumstances identical to this case. See *United States v. D'Alfonso*, 397 F. App'x 754, 755-56 (3d Cir. 2010) (per curiam) (affirming denial of motion to withdraw guilty plea where the appellant had already been sentenced and had "filed both an appeal and a collateral attack to no avail"); see also *United States v. Hough*, No. 02-649, 2011 WL 900111, at *2 (D.N.J. Mar. 15, 2011) ("since Defendant's sentence had already been imposed eight years ago, a Rule 11 motion to withdraw the plea is no longer an option.").

ACCORDINGLY, this 7th day of May, 2014, **IT IS HEREBY ORDERED THAT** Pierre Cidone's Motion to Withdraw Guilty Plea (Doc. 265) is **DENIED**.

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge